Comments on the Railroad Problem

BY

ROBERT S. LOVETT

President, Union Pacific System

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In the discussion of the Railroad Problem now before Congress, it seems safe to assume that the following propositions are too clear to require or admit of argument:

1. That it is necessary for Congress to enact, at the earliest date practicable, legislation required to develop and continue to provide the railroad facilities which the country must have.

2. That the country has definitely made up its judgment against the ownership and operation of the railroads by the Government.

3. That public opinion overwhelmingly favors the continuance, by private ownership, of competition in service and facilities furnished by railroad carriers.

It will be assumed, therefore, that these propositions are established, and they will not be discussed.

I

The Weakness of Certain Proposed Plans

Plans for solution of the problem have been presented in such number, and discussion has taken such a wide range, that Congress must be confused by the multitude of suggestions. Probably every theory of railroad regulation has been presented; and many of these theories, while plausible and attractive in the abstract, are impracticable when applied to actual conditions.

The situation, however, is very real, and we must deal with actualities.

We have to deal with about 275,000 miles of railroad, serving the growing commerce of a nation of over one hundred millions of people, and representing an investment of nearly twenty billions of dollars, owned by all classes of citizens, and by savings banks, insurance companies, and financial institutions of every kind.

The effect of every radical proposition upon this situation, therefore, should be studied carefully before it is adopted. It is not an occasion for experiments. Hence it is proper to examine at the outset some of the proposals which appear to be of this character.

A. The Problem of the Strong and the Weak Companies

Most of the discussion recently has centered about, and given great prominence to, the supposed difficulty presented by the case of the strong and the weak companies operating railroads in competition.

It is of course necessary that the transportation rates should be the same on both roads, since otherwise the lower rate would attract all the business.

The difficulty arises because a rate high enough to make the weak or inefficient road reasonably profitable, it is assumed would make the strong or efficient road unduly profitable.

Various remedies for strengthening the weak and reducing the strong have been proposed—all assuming, without showing, that this is wise and necessary.

Why Many Roads Are Weak

Now, many of the weak roads are weak because they serve territories which, for various reasons, afford but little traffic—sparsely settled, poor in agricultural or other production, etc.—but which nevertheless are giving the service which the traffic justifies.

I presume *no one expects service substantially out of proportion to the traffic.*

Some of the weak roads are weak because they are in competitive territory. Their traffic is com-

petitive, and they are not able to get sufficient traffic away from rivals to become prosperous. These roads are not so vital to the community, because the competing roads afford the transportation required.

Other roads are weak as a result of mistakes in policy, unsound financing, or bad management; and many because building, in the first instance, never was justified by the traffic obtainable.

All weak roads, however, are put in the same category in the discussion seeking relief for them, regardless of the cause of their condition or the public necessity for more service than they are now performing.

The Fallacy of "Book Value"

True, many propose as a basis of the remedies they suggest that the real value of each road shall be ascertained, but others, and perhaps the most numerous advocates, propose that the property investment account, or the "book value," of these roads shall be taken as their value for rate-making purposes; whereas the book value includes, in probably all cases, the par value of the stock and bonds kept alive and now outstanding regardless of earnings or actual value.

Furthermore, in the discussion little attention has been paid to the fact that *the business of the country is not handled by the so-called weak roads.*

That is generally the reason why they remain weak. They have not enough business, either because the

territory they serve does not produce it, or because their more efficient rivals are able to get it through competition.

The congestion of traffic in 1917-1918 did not occur on the weak roads, but on the so-called strong roads.

Very few of the weak lines were taxed except by the overflow of traffic in excess of what the strong lines could handle. This was because the bulk of the traffic is normally on the strong lines; and this tends to make them strong. In time of stress, the burden naturally falls upon these lines.

But under the Government policy of inflexible or declining transportation rates for a number of years, during which wages and other operating costs have been rising, *the strong roads have found difficulty in getting capital* to provide the additional main tracks, terminals, equipment and other facilities for handling the growing traffic.

B. The Plan to Consolidate All Roads Into a Few Systems

It is undoubtedly true that the existence of financially strong roads and weak roads in the same locality owning lines competing with each other, presents a serious difficulty if it is the determination of the Government to add value to some and take value from others by law.

One of the methods suggested for overcoming the difficulty arising from the existence of strong and weak roads in competitive territory is by the consolidation of all railroads into a few systems.

There is insistence by some very eminent authorities on railroad affairs and in matters of law and finance that all the railroads of the country should be consolidated into a few large systems—from twelve to twenty-five in number—in order that the weak may be supported by the strong.

By merging the poor roads with the prosperous in a large traffic territory, it is said that rates could be made which would yield a fair return on the property as a whole, which, without such consolidation, would impoverish some and enrich others.

The Outstanding Necessity Before Congress

The outstanding necessity confronting Congress and the task before it, as I understand, is to enact legislation that will restore the confidence of investors and establish the credit of the carriers, so that the money necessary to provide and keep up the railroad facilities of the country may be obtained.

The advocates of consolidation, however, fail to point out how their plan will accomplish this object.

For example, it is not apparent how the credit of the New York Central, or the Pennsylvania, or the Chicago and North Western, or the Burlington, or the Union Pacific, or the Atlantic Coast Line would be improved by merging them with their poor and unprofitable neighbors and rivals.

Instead of improving the credit of the weak road *the only effect of the project*, as it appears to me, *would be to impair the credit of the strong road.*

The inevitable effect would be to reduce the average of the credit of all the railroads.

The Credit of the Strong Roads None Too Good

The credit of the strongest of these roads has not been any too good during the last ten years.

Their credit needs support even more than the weak roads, because they have greater responsibility and greater burdens to bear.

They must provide the facilities for the increased traffic they serve, which inevitably goes to their lines in times of stress.

Such credit as they now have is due to their ability to pay dividends. Falling rates and mounting expenses and the policy of state and national regulations increasingly menaced the stability of dividends, and thus weakened the credit of the strong roads.

* * *

It seems to be assumed that the strong roads have been earning, in excess of what they are legally entitled to earn, an amount sufficient to make up for the inadequate earnings of the weak roads, and that when the properties are consolidated and the earnings of the group thus pooled, the average will provide credit for all.

But this is a fallacy which can be demonstrated at the proper time. In any event, the earnings represent a value which must be paid for by the consolidated corporation when it acquires the properties.

It is fair to say that the proponents of the plan of consolidation do not propose, as some other plans contemplate, the confiscation of the property of the stockholders of the strong roads for the benefit of the owners of the weak roads.

They do not suggest that the property investment account or book value of the property upon each company's books should be taken as the measure of value in consolidation, but that the real value of the property should be the basis.

The Practical Difficulties of the Plan

But the practical difficulty of accomplishing the consolidation of all the railroads in the United States into a comparatively small number of companies seems to be a conclusive answer to the suggestion.

Briefly, it is proposed, as I understand the proposition, that Congress shall incorporate a dozen or more companies, each to acquire certain railroads. Some suggest that all railroads in a certain territory to be prescribed by the Interstate Commerce Commission shall be acquired, but this, of course, would absolutely eliminate all competition, so that I assume the territorial division among these absorbing companies will not be adopted, in view of the almost universal desire to preserve competition.

Others suggest that all the railroads be divided between the absorbing companies, not geographically, but in such manner as to have them interlace and preserve competition; and if all the roads are to be merged into a few companies, this method should be preferred to the geographical division.

Congress undoubtedly can acquire any or all the railroads of the United States for the Government. It may also create corporations with power to acquire them, and consequently it may create

several corporations to acquire all the roads in a prescribed territory, or certain specified railroads.

Congress Has No Right to Compel Consolidation

But Congress has no right to compel one corporation to consolidate with another.

It may give one the right to acquire the property of the other by condemnation, but it must pay for it, and (here is the difficulty) *pay for it in cash.*

Congress has no power to compel the stockholder of the railroads to be absorbed, to accept in exchange the stock of one of the dozen or more companies which are to absorb. When these absorbing companies acquire the railroads assigned to them, they must pay the value *in cash* to all who demand cash.

Whether this will be few or many, no one knows. It is certain that many will demand cash; and then it must be provided if the transaction is to be accomplished.

The "underwriting" of a fabulous amount must be provided. Since no one will know in advance how many will demand cash instead of new securities, the underwriting must be for the entire amount.

Questions That Must Be Answered

Will Congress appropriate the billions necessary? Have we bankers enough to provide the money except through a series of years? And what will

happen to the financial welfare of the country in the meantime, and what will the money cost?

The familiar mortgage foreclosure and reorganization afford no analogy. The railroad will not be sold at auction as in those cases but must be paid for at its value as determined in proceedings conforming to due process of law.

Notwithstanding the great experience and ability of some of those who are advocating this method of consolidation, I am unable to bring myself to believe that it is practicable, unless the operation is extended over a period of perhaps ten years or more, during which it would be an element of constant disturbance in our financial affairs.

I may add, though perhaps not relevant to the main point I am discussing, that my judgment is against the consolidation of all the railroads of the country into a few companies, say from ten to thirty, because I believe the companies would be *too large and unwieldly for efficient and economical management.*

Suggested Consolidations Too Big

I believe that railroad executives generally will agree that railroad systems may be made too big—that there are limits beyond which a railroad system should not, in the interest of economy and efficiency, be extended by consolidation with or acquisition of other lines. I am very confident that this is true.

More important still, consolidation should not

be arbitrary. Each should be for a definite purpose and, where the Government regulates, for a definite public benefit.

I am entirely in accord with the policy of removing some of the restrictions and permitting consolidations, subject always to approval, after hearing, by the Interstate Commerce Commission.

I believe that the absorption of some of the weak lines by the strong lines, upon fair terms, should be promoted. But competition in service and facilities should not only be preserved, but should be extended, and no consolidation should be permitted which in substantial degree eliminates such competition.

I believe that the existing railroad systems should be taken as a basis, and such consolidation as is desirable should be built up on that basis. This would avoid the insuperable financial difficulty already mentioned, and the disorganization of existing relations, *and the disturbance of the billions of securities already outstanding.*

C. The Pooling of Net Earnings

Another and much advertised and discussed method for solving the problem presented by the existence of financially strong and weak lines in the same locality is, in substance, that the Interstate Commerce Commission shall divide the railroads of the country into territorial or traffic groups and take the "Property Investment" account or book

value of all the railroads in each group, and establish rates for that group sufficient to yield say six per cent., or some other specified return, on such investment or book value of each group.

Undoubtedly this would result in a much higher yield than the average, for the efficient roads, and much lower than the average for the inefficient, just as has always been the case in the past.

But it is proposed, as a part of this plan, that the most efficient roads shall be limited to the average, and their earnings in excess of the average shall be set aside for the benefit, in some form, of the unprofitable roads that earn less.

The method of distributing the fund between the different roads varies with the different suggestions, but all contemplate that the law shall limit the earnings of the prosperous roads and increase the earnings of the poor roads.

The advocates of the plan may argue that they do not intend to take any value away from the strong roads except those whose earnings are "excessive," but that the earnings of the weak roads will be provided by increasing rates under an adjustment that will give all the increase to the weak roads.

The Proposal
Essentially Confiscatory

But many of the roads are already earning in excess of six per cent., the average rate suggested; and obviously the plan proposes to take this excess from the stockholders of the roads earning it for

the benefit of the security holders of the weaker roads.

However disguised and in spite of all the refinement of draughtsmanship and legal expression, the substantial object sought is to take, directly or indirectly, from the stockholders of the prosperous roads net earnings of their properties and give the same to the security holders of the weak roads.

Let us consider first who is to suffer and who is to benefit by this arrangement.

The stocks of the prosperous roads—that is, dividend payers—are widely scattered. They afford the only income, and literally the only means of subsistence, of hundreds of thousands of people in this country. They are thus held because they pay dividends.

The poor, who require a return from their savings and who must have some income, cannot and generally do not buy railroad stocks that have not paid dividends.

Who Would Benefit By This Plan

The stocks of the inefficient roads most generally, I believe, are held by small groups, very often by syndicates that accumulated them for speculation, or got them in some reorganization and are holding them with the hope that something will turn up that will let them out without loss, or give them a speculative profit.

Some of the schemes that have been proposed will afford this longed for opportunity to many a

weary speculator in inferior railroad securities, but will be very discouraging to the multitude, including a great many women, who have invested their small means in high-class railroad stocks for an income on which to live.

Some Constitutional Considerations

But, I submit that Congress is without power to take the net earnings belonging to the stockholders of one railroad company for the benefit of the security holders of another railroad company.

It would be a denial of due process of law, and would also be the taking of private property for public use without just compensation, contrary to the Fifth Amendment of the Federal Constitution.

A law that would take the net earnings of one railroad company and give the same to another would be as obnoxious as would be a law declaring that the property of A should thereafter be the property of B.

One person's property can be taken by the Government for another person only by due proceedings in each instance, and just compensation. This is the essence of the Fifth Amendment.

Nor does it matter how indirect the taking may be. The taking of income from the company earning it and putting it into some fund to be thereafter distributed for the benefit of others is as futile as an effort to take directly from company A and give to company B.

It may be argued that a railroad company is only entitled to a fair return on the *value* of its property.

That is true as far as it goes, and if it were not for

the Fifth Amendment. But such argument begs the question.

The Government may fix rates sufficient to yield a fair return upon the value of the property, and the company has no constitutional right to complain. But that is a very different proposition from taking from the company, *after* it has actually earned and saved the money, a portion of the net revenue and giving it to another company.

That is not fixing rates which the carrier may charge the shipper, but is taking the carrier's property for the benefit of another, or for the public, if you please, without due process of law and without just compensation. They are two entirely different acts and functions.

* * *

It is the right and duty of the Government to prescribe reasonable rates which the carrier shall charge the shipper. The Government having fixed the rate, the carrier may not constitutionally complain, if it yields a fair return on the value of the property.

The Revenues of a Carrier are Its own Property

But the revenue which the carrier gets from the rate becomes the carrier's property and is as much protected against arbitrary appropriation as any individual's property. It has then ceased to be a matter of rates, for the rates have been charged and the shipper has paid them.

The Government may say that the carrier is making too much money and may reduce its rates, but I can imagine no principle upon which it can

be claimed that, instead of reducing the rates, the Government may take the money from the carrier that earns it, for the benefit of another carrier, any more than it can take from the miscellaneous funds or assets of the carrier cash or property for the benefit of a poorer carrier, in order to equalize their financial condition.

Perhaps I am not making the distinction as clear and as vital as it appears to me.

The Plan Violates the Constitutional Guaranty

The regulation of the business and operations of the carriers and of the rates they shall charge is one thing: the seizure and appropriation of the net revenue of the carrier, realized under rates which the Government prescribes, is a very different thing. One is within the power of Congress and the agencies that it creates; the other is the giving of one company's and one stockholder's property to another company and other stockholders against constitutional guaranty and without due process of law.

* * *

But it may be argued that if, as is conceded, Congress has power to make rates that will yield no more than say six per cent, and if indeed Congress may make different rates for different railroads (which, however, I do *not* concede) why may it not accomplish the same result by requiring the roads earning in excess of the desired rate to turn

the excess over for the benefit of the roads earning less?

Furthermore, if Congress may take the excess earnings in the form of taxation for the public treasury, why may not Congress accomplish the same result by requiring the railroads earning in excess of the desired rate to pay the excess over for the benefit of the roads earning less?

My answer is that we must deal with what Congress does—not what it might do.

We must test the constitutionality of a law by the terms of that law and not by the terms of some other law, and least of all by the terms of a non-existent law.

> We all know very well that Congress will not if it could make different rates for different railroads in the same territory, and the suggestion that it might do so is obviously inadequate as an answer to the constitutional objection.
>
> We all know, also, that even if Congress has the power to take the excess earnings of one railroad company by taxation for the public treasury, it would also take an Act of Congress to appropriate that money again to make up the deficit of the inefficient and poorer roads.
>
> The stockholders of the companies to be despoiled will quite naturally prefer to take their chances on Congress making different rates for different railroads, when they know that Congress will never do it, and take their chances on Congress appropriating their earnings for the public treasury, to be reappropriated by other Congresses for the benefit of rival but unprosperous roads, when they know that Congress will do nothing of the kind.

Those Who Are Most Vitally Concerned

It may seem old fashioned now to plead the Constitution against any action that is convenient and expedient, and especially to invoke it for the protection of property rights.

But I venture to urge its consideration in this behalf, not for the benefit of any rich railroad company, but for the hundreds of thousands of stockholders who look to dividends upon the stock of conservatively managed and prosperous railroads as their only means of support.

And it will not be a sufficient answer to the argument to say that it emanates from one who happens to be connected with a prosperous railroad company.

Earnings, Not Property Investment, the True Basis of Value

But aside from the constitutional objection, the project is grossly unfair to the owners of the efficient roads and also to the public.

It means that the non-paying, inefficient roads shall be made to pay, but this must be either at the expense of the stockholders of the good roads, or of the public, or both.

Why this great concern for the unprofitable railroads? Are they to be rebuilt and improved? If so, why?

Have they traffic to justify it? Have they now more than they can handle? Or is it not true that their trouble is a lack of traffic?

Or is the money to give value to stocks that have no value now and never will have any otherwise?

Whenever the question of value becomes material in railroad regulation, no reason is apparent why common sense should not be allowed sway, just as in other cases. But it seems not to be.

An untried theory is generally substituted immediately—"Original Cost," regardless of the wisdom or folly of the project as demonstrated by experience; "Cost of Reproduction less Depreciation," although exact reproduction is impossible and the property is better than if new; "Property Investment Account," no matter how many worthless securities may be carried at par; and other mere theories.

A Railroad is Worth What It Will Earn

Now a *railroad is worth what it will earn;* and the average of its earnings during a series of average years ought to be a fair guide under the conditions then existing.

If this is not taken, then there can be no hard and fast rule, and all the circumstances, some of which were enumerated by the Supreme Court in Smyth *v.* Ames (169 U. S. 466) must be taken into account.

A hard and fast rule would be convenient, but any that deprives the owner of the value of his property as reflected by its net earnings, is unjust and ought not to be adopted.

But the earnings of the property depend in large

measure upon the rates the owner is allowed to charge, and it is suggested that these rates in turn may be fixed by the Government; and that is true. Let us apply this to the present situation.

> Railroad rates have been under congressional regulation since 1887. True, that for a number of years the regulation was little more than nominal, and there were rebates and secret rates, and rate-cutting in various forms. But all will agree that rebates and secret rates stopped in 1906, when the power of inspection and detection was given the Interstate Commerce Commission, and imprisonment was made a part of the punishment, and was inflicted upon the receiver as well as the giver of the rebate. And the system of accounting prescribed by the Commission has reflected with substantial accuracy the financial condition of the railroad companies from the beginning.
>
> So that since 1906, at least, railroad earnings have been open to the public, and the Commission has had power since that year, and has effectively exercised the power, to reduce rates when found too high.
>
> Every one seems to be estopped, therefore, to claim that the railroad rates in this country, or in any substantial territory, or on any important line, have been too high.
>
> The fact is that they have been too low.

Under this system of rates railroad values worked themselves out. Roads that had earning capacity demonstrated it, and those that had little earning capacity also demonstrated that, and under rates for which the Government was responsible.

Billions of money has been lent for improvements on the basis of credit thus established by the various companies.

The securities of the good roads were bought and sold at high levels of prices, and the securities of the inferior roads were bought and sold at lower levels; and thus they are held by investors to-day.

The prices of these securities are the evidence of the popular judgment of the relative value of these railroads, and are the best evidence of such value. These values were based upon the earnings of the railroads under the rates they were allowed by law to charge.

As a matter of common sense, as well as plain justice, what better evidence of the value of these railroads, and of one railroad as compared with another, is possible?

How can the Government, consistently with fair dealing, question the value of the railroads as demonstrated through many years by rates established by or under the regulation of its own agencies?

New money has been put into the properties by investors for additions, betterments and equipment, thus increasing transportation facilities, which it would be the duty of the Government itself to provide if not furnished by private capital; and much of this capital has been too recently invested to have been reflected in increased earnings.

The wages of labor, the cost of material, and other operating expenses and taxes have grown enormously, while rates have declined (with the exception of the recent wartime increases), so that the purchasing power of the legally fixed transportation rate has fallen, and is, generally speaking, not half what it formerly was.

It is upon such considerations as these, and the values established under earnings from rates prescribed or sanctioned by law for years, that rates must be based, and not upon book value, reproduction cost, or any other mere theory. It is the practical situation and existing status that should be dealt with.

Why venture into new fields for rate-making and seek to disturb and unsettle not merely the value of the securities involved, but the business and commerce of the country, which have become adjusted to and in fact made, the present system of rates?

Why not continue the present adjustment of rates, and make such increases as necessary to meet the increased cost of recent years and provide a return on the new capital that has been put into properties in such enormous amounts, and which must be provided for the future, leaving the Interstate Commerce Commission free to reconsider and review rates from time to time, so as to adjust the revenue to the changing expense of operation, the rise and fall of wages and prices, and the expenditure of new capital?

D. A Guaranty by the Government

Many financiers and railroad men believe that a guaranty of dividends or some definite return on the money invested in railroads is necessary in order to re-establish faith in the railroad securities now constituting such an important part of our

financial structure, and induce the investment of the additional capital necessary to provide the railroad facilities which are required.

This leads to the consideration of the question of a guaranty by the Government.

Undoubtedly the guaranty by the Government of a reasonable return upon the full value of railroad property would be satisfactory to those who consider the problem only from the standpoint of the investor.

But that is impracticable, because it is not believed that the Government, as a permanent policy, would guarantee the railroad owners a fair return upon the *full value* of their property and leave the management in their hands, taking all of the risk and none of the profits: whereas, if the Government should take the excess above the guaranty, then it would cease to be a guaranty, and all incentive to competition and economy by the private management would be eliminated. I fancy that the people would prefer to come directly to Government ownership, unpopular though it is.

It has been urged, however, that a small return —something less than the full value—should be guaranteed in order to furnish the company financial credit, while still leaving the incentive to competition and economy. I am afraid that plan would not accomplish the object.

The guaranty of a return of two or three or four per cent upon the value of a railroad might be comforting to the first mortgage bondholders, or

the holders of other bonds now outstanding, who would have the first claim upon the fund. But how would it help the corporation to raise more money, which is the object desired?

> Of what benefit would a Government guaranty of two or three or even four per cent upon the value of the Pennsylvania Railroad, or the New York Central Railroad, or the Baltimore and Ohio Railroad, or the Rock Island Railroad, or most other railroads, be to those companies?
>
> How would it assist them in raising money, since the guaranty would not be sufficient to pay the interest on bonds already outstanding and secured by prior liens?
>
> It would make doubly secure what is already abundantly secured. But it would afford no collateral for new issues nor secure new loans. On the contrary, I believe it would be distinctly detrimental to the company in securing new money, because of the inevitable tendency that such guaranty would have to prompt Government officials to interfere and endeavor to shape the policy of the company to extreme conservatism, in order to guard against the possibility of the Government being called upon to meet the guaranty.
>
> Moreover, as time passed, the public would be more and more inclined to regard the amount of the guaranty as the measure of the return to which the railroad company was entitled, and in every rate hearing the Government guaranty would be dwelt upon by those opposing increases or seeking reductions in rates as the Government's judgment of what the company was entitled to earn.

The importance of re-establishing railroad credit cannot be overestimated; but, nevertheless, I am

persuaded that no guaranty short of a return upon the full value of railroad property will be helpful to that end, and that a guaranty of full value is not practicable without Government operation; and, as indicated at the outset, I regard that as beyond present discussion.

II

The Sound Remedy

The plan devised by the committee of railroad executives and submitted through its chairman, Mr. T. De Witt Cuyler, to the Senate Committee on Interstate and Foreign Commerce offers, in my judgment, the best solution of the problem. Its principal features are:

(A) The rule of rate-making to be provided by Congress itself, which should require that the rates be sufficient to enable the carriers to provide the requisite service and facilities, protect existing investments, and provide the new capital necessary in the public interest.

(B) Compulsory federal incorporation of all railroad carriers.

(C) Exclusive federal regulation of railroad securities.

(D) Exclusive federal regulation of railroad rates.

(E) Creation of a Department of Transportation with power to act quickly and deal with emergencies, and the distribution of the regulatory powers between such Department and the Interstate Commerce Commission, with the creation of such regional or other subordinate commissions and agencies as may be necessary.

(F) Modification of restrictions upon railroad consolidations, and provision for the merging of lines when in the public interest and approval by the Commission.

A. That Congress Establish a Rule of Rate-Making

Without Government ownership or operation, the only reliance for railroad revenue to support railroad credit must be upon the *adoption by Congress of a sound railroad policy* involving absolute justice to railroad capital, *and requiring specifically and plainly that the rates to be fixed shall be sufficient to enable the carriers to provide safe and adequate service, to protect existing values, and to attract the new capital necessary in the public interest.*

To that end Congress should, among other things, specifically provide that the level of rates must properly reflect the cost of wages, materials and all other expenses incident to maintenance and operation, and a reasonable return upon the new capital invested.

It is for Congress to say whether the railroads of the nation shall be publicly or privately owned, and whether they shall be prosperous and efficient or poor and inefficient, for Congress has the law-making, which includes the rate-making power.

True, Congress cannot make a confiscatory rate. That would be unconstitutional, and a judicial question would arise.

The Only Limitations of a "Reasonable Rate"

The rates which Congress makes—directly or indirectly through a commission or other agency—

must be "reasonable." I anticipate the usual sneering question: "What is a reasonable rate?"

It is whatever rate Congress may fix, provided it is not so low as to be confiscatory of the carrier's property, nor so high as to confiscate the shipper's property by preventing it from moving. Between those limits any rate the Government fixes is "reasonable" in a legal sense.

> There is a wide field for the exercise of discretion by the rate-making power in fixing a reasonable rate.
>
> A reasonable rate for a given service, for instance, may be 25 cents, or 30 cents, or 40 cents, or 50 cents. That is to say, a rate of 50 cents for that service may allow the traffic to move freely, and leave a large profit to the shipper, as well as a large return to the carrier, while a rate of 25 cents might still be above confiscation of the carrier's property and leave some profit to the carrier.
>
> Now any rate between 25 cents, which still leaves the carrier some profit, and 50 cents, which the shipper can afford to pay, is, upon the facts assumed, a "reasonable" rate; and it is for the Government to say whether the rate shall be 25 cents or 50 cents, or some amount between those figures, according to its policy.
>
> The policy of the Government may be to allow the railroads nothing above maintenance and a bare living for the capital invested, in which case the rate might be fixed at 25 cents; or its policy may be to encourage additions, betterments, extensions, the purchase of new equipment, improved facilities, better service, and, generally, the upbuilding of its transportation system, in which case the rate might be fixed at 40 cents, or 50 cents.

Congress Itself Should Declare A National Railroad Policy

This is of course a very simple illustration; but my point is that the time has arrived for Congress itself to declare by law a national railroad policy, and not leave it to the Interstate Commerce Commissioners or other subordinate officers or agencies to say whether the policy of the National Government is to impoverish the railroads to please certain shippers, or to improve and extend railroad facilities for the country by making compensatory rates, or to pursue one policy at one season and the other policy at another.

Congress should itself provide the rule of rate-making and require the Commission or other rate-making agency to take into account the increase in taxation, in rates of wages, in cost of materials and other operating costs, and the new capital invested in the property, as well as the value of the property as previously demonstrated.

Our railroad transportation system, which is essentially national, should be rescued from the irresponsible and conflicting state agencies, and brought under uniform control and regulation in the national interest, except as to strictly local matters.

The national agencies necessary for the administration and supervision of the railroads should be created.

It is not enough to create them with *authority* to act, but they must be sufficient in number and character to *act*, for it is worse than idle to confer

jurisdiction and authority, as upon the Interstate Commerce Commission, to perform a task which in magnitude is utterly beyond its power to perform.

Necessary to Provide for Sufficiency of Facilities

Among the agencies that should be created is one responsible for the *sufficiency of the transportation facilities* required by the people.

Since the creation of the Interstate Commerce Commission, the only concern of the Government, as reflected by legislation and commission action, has been to keep down the revenues, prevent discrimination, and generally chastise railroad management.

No sense of responsibility for providing the requisite railroad facilities has been manifested on behalf of the Government.

That task has been left to private enterprise, handicapped by the governmental policy of suspicion and repression.

But it is now abundantly evident that this policy will not provide the transportation which is essential for the country; that the Government must either take over the railroads and provide the facilities out of the public treasury, or leave them in private ownership under government supervision of a kind and character that will assure fair dealing and attract the necessary capital.

The Interstate Commerce Commission utterly failed to see and meet by rates the demand for increased transportation which was constantly growing until the collapse came.

Unless this disastrous mistake is to be repeated, and if the requisite private capital is to be found, it will be necessary for Congress to create some Department or Board or Agency whose duty it shall be, as a part of the executive machinery of the Government, to study and keep informed respecting the transportation facilities as they are, the need for more transportation and better service, where the need is, when it is likely to increase, what the necessary facilities will cost, the ability of the carriers to provide them, the reason why they are not provided, if lacking, and if more revenue is needed, then how much; and certify the facts to the Interstate Commerce Commission as the basis for its action in revising the rates to provide the additional revenue, if needed.

In other words, an agency of the Government charged with the responsibility, on behalf of the Government, of seeing that the transportation needed by the country is provided, and deciding for the Government the money that is required, leaving the Interstate Commerce Commission to adjust the rates necessary for that purpose, and to deal with all other rate questions, controversies, complaints, etc., for which, and only for which, it is equipped.

Hopeless to Place the Responsibility Upon the Interstate Commerce Commission

It is hopeless to put upon the Interstate Commerce Commission the responsibility resting upon the Government to see that the railroad transportation facilities essential to the welfare of the

country are provided when and as needed, and at the same time regulate all the railroad rates and hear and determine all the complaints.

They are entirely separate and distinct functions: one is the executive function of looking after the transportation service, its character and sufficiency, and deciding what is needed, and what amount is necessary to provide it; the other is the legislative function of fixing the rates and the semi-judicial function of determining rate controversies.

The Interstate Commerce Commission is not equipped for the former, and has shown its lack of appreciation of the necessity for and the means of providing and assuring more transportation facilities.

It is not sufficient, therefore, to relegate railroad capital only to the agency that has failed so signally in the past. But *it will be necessary*, if private management is to succeed, *for the Government to perform the governmental duty of seeing that the requisite transportation facilities and service are provided*, and to that end create an agency to determine the necessity and the cost, and to advise the measures necessary to provide the capital which the Government itself does not propose to furnish.

Railroad Capital Will Not Take All the Risk Without Hope of Profit

If Congress will enact the necessary laws giving railroad capital a business chance, I believe that capital will take a business risk, and the money

required to provide the requisite railroad facilities for the future will be forthcoming.

But railroad investors and owners will not take all the risks and forego the profits of the business.

Why should they? There are too many other opportunities for profitable investment all over the world, and more now and for many years to come than ever before.

If, as many propose, the return upon railroad capital is to be limited at best to a low fixed return, even by the most successful and best managed roads, with no hope of anything more for good management, inherent earning capacity and other considerations ordinarily influencing values, while all misfortunes are to be borne by the investors, the necessary capital will not be obtained.

The hope of profit should not be foreclosed. If it is the policy of the Government to limit the return at best to six per cent or some other low fixed rate, then that return will have to be guaranteed to attract the investor. Only the prospect of profit justifies risk in financial affairs.

No Reason Why Profit Should Be Denied A Railroad Stockholder

Under rates prescribed by the Government, or with its approval, and applying to all alike, why should profit be denied a stockholder of the wisely built, well managed railroad any more than to the owners of bank stock, or steel stock, or brewery stock, or any other stock?

But it is said that the latter are engaged in private business.

Very well. Who is more deserving of encouragement, liberal treatment and appreciation—he whose money provides the railroad facilities which the public convenience and interest require and conducts his business so well that he can make a profit out of it at rates which the Government itself fixes; or the man in private business (in some lines, the more private the better for it) with no public interest involved, and only his own selfish interest to serve?

It is about time that we were introducing common sense into some of our theories about railroad capital.

No money except that devoted purely to benevolence is employed more in the public interest or is entitled to more encouragement or fairer treatment and consideration than that which is invested in the development and upbuilding of our railroad facilities.

It is "affected with a public interest" in more senses than that which subjects it to reasonable regulation by the Government, though too often these are overlooked.

It serves the public; it provides transportation facilities and conveniences for the public; and promotes the public interest in vital ways.

If by good management it can be made productive to its owner in competition with others, in the character of service and facilities supplied at rates fixed by the Government, there is no reason in

morals, and there should be none in law, why the owner should not be as much entitled to enjoy the profit as the owner of money invested in private, and often much less worthy, enterprises.

The Choice Before The Nation

I believe firmly that *the choice of this country with respect to its railroad transportation ultimately* is between

(1) Inadequate and impoverished railroad transportation facilities, or

(2) Government ownership of the railroads, or

(3) A guaranty by the Government of a reasonable return upon railroad capital, or

(4) Rates that will be reasonable under all the circumstances determined by a Government agency that will consider the needs of the traffic and the needs of the carrier, with the right to each carrier to keep whatever profit it can make out of such rates so established, by good management, good service, economy, wise investment, and success in competing for business.

B. Compulsory Federal Incorporation

But it is not merely a just rule of rate-making enjoined upon the commission by law, but relief from the disabilities imposed by conflicting and impracticable state regulation, and a comprehen-

sive and unified system of national regulation that are necessary to re-establish the credit of the railroads and provide the facilities that the country needs; and it is the plan, as a whole, recommended by the Committee of Railroad Executives, which is urged.

Among the most important of the needs of the situation is the compulsory federal incorporation of railroad carriers.

So long as Congress confined itself to restrictive legislation of railroads as *common carriers*, it was not material whether they were federal or state corporations, or indeed corporations at all.

The working and operation of the physical properties and their relations as carriers to the public were the only matters of concern, and their corporate functions were not substantially affected.

If only restrictive and oppressive legislation were intended now, federal incorporation would not be necessary.

But the time seems to have arrived for a comprehensive legislative plan for developing and sustaining necessary railroad transportation, or, in other words, for *constructive legislation*.

All Constructive Legislation Must Primarily Assure Railroad Credit

The very first feature of the problem is the credit of the railroads—the means by which this is to be established and maintained in order that the requisite capital may be secured.

This involves at once the most important corporate function; the power to raise money and issue stock and bonds.

> Hitherto Congress has left that power exclusively with the states, no two of which have the same laws or regulate the subject in the same way.
>
> They have, however, within the last ten years, enormously multiplied their laws upon the subject—all of them restrictive—until, generally speaking, it is not too much to say that railroad systems which traverse several states are tied hand and foot when it comes to the issue and sale of stock and bonds, and too often they are thrown back upon short term borrowing, with dangerous and often unfortunate consequences.

The power to borrow money and the power to issue and sell stock and bonds are, of course, corporate powers.

It is elementary law that a corporation derives its corporate powers from the government that creates it and can exercise none not conferred—especially none prohibited—by that government.

May Congress authorize a state railroad corporation engaged in interstate commerce to borrow money and issue securities in excess of the amount or in a different manner from that authorized by the state that created it?

I believe that by a carefully worded statute it can. Then is it necessary to federalize all state railroad corporations in order to enable Congress to regulate their financial operations and the issue and sale of securities by them?

That in my opinion will depend very much on the action of the several states.

Railroad Corporations Now Dependent Upon Individual States

The corporations now are the creatures of the states incorporating them. The states gave them their lives and conferred all their powers, and the states may take away their lives and abolish their powers so long as they are permitted to remain as mere creatures of the states.

Let me illustrate my meaning: Take for illustration some well-known railroad—one near us—say the Baltimore & Ohio. That company, I believe, is a corporation of the State of Maryland. It can exercise only such powers as the State of Maryland confers upon it. It can exercise even these in some other state only by consent of such state. But it cannot exercise in any other state, any more than in Maryland, powers denied to it by Maryland, the state of its creation. Ordinarily a state specifies the maximum amount of capital stock a corporation may issue and prescribes how it shall be issued and disposed of, and regulates in detail its corporate functions, particularly in the matter of capitalization.

Let us suppose that Congress, in regulating the finances of the railroads of the United States, prescribes corporate procedure entirely different from and in direct conflict with that prescribed for the Baltimore & Ohio by the State of Maryland.

Suppose the laws of the State of Maryland expressly deny its creature, the Baltimore & Ohio, the necessary power to do the financing provided for by the laws of Congress.

May the Baltimore & Ohio proceed to do things prohibited by the laws of the state that created it and exercise powers denied by that state?

Many states have reserved the power to repeal railroad and other charters granted under their laws. Suppose the state repeals the charter of the railroad company?

It would not even be necessary for the state to give a reason for its repeal. The corporation would be at an end. There would be no congressional act for incorporation to which the railroad could turn.

Practical Problems Involved in National Regulation of Securities of State Corporations

How would the government meet such a situation and carry out the national policy by utilizing the existing state corporations?

I assume that Congress would not undertake to compel the corporations to issue and sell stock or bonds.

The most it could do would be to give them the right to issue and sell such securities, a right which the state could by coercion prevent the corporation from exercising, just as in so many instances the states have coerced railroad companies into making interstate rates in accordance with the wishes of state commissions.

Congress would not, I assume, seek by law to compel federal corporations to issue securities, but being federal corporations they would be protected against coercion of the state authorities.

This is no mere imaginary danger. A bill was

introduced (but I do not know whether it was enacted) in one of the state legislatures, providing for the forfeiture of the charter of any railroad corporation of that state that obeyed orders of the Interstate Commerce Commission in conflict with orders of the state railroad commission; and there are scores and even hundreds of instances where state commissions have coerced railroad companies into making interstate rates in accordance with the wishes of the state commissions.

Difficulties Involved in Leases and Consolidations

What is true with respect to the issue of securities is equally applicable to the consolidation, lease, sale or other combination of railroads.

> The power is a *corporate* power, and no corporation can consolidate with another or sell or lease or otherwise dispose of its railroad or any part thereof unless expressly authorized by the laws of the state that created it.
>
> Violation of this restraint subjects it to forfeiture of its charter, if not other penalties. This, too, is elementary law.
>
> Now it seems to be generally recognized that the legislation under consideration should provide for the merging in some manner of some of the lines through consolidations, sales, leases or otherwise, where by so doing the public interest will be promoted, and subject to the previous approval of the Interstate Commerce Commission.
>
> It is obvious, I submit, that none of these objects can be accomplished to a considerable extent without infinite difficulty and delay, if the ownership of the

railroads of the country is left in the meantime in corporations created by the several states, many of which have statutes, and even constitutions, that expressly prohibit the very thing that it now seems Congress may desire to accomplish.

All Railroad Corporations Should Be Subject to Financial Regulation by the Nation

Then is it not necessary in a nation-wide transportation system, and is it not obviously in the interest of all concerned—the investor, the shipper and the citizen generally—that all railroad corporations throughout the United States should have the same corporate powers and restrictions with respect to their financial powers, and the same duties and obligations to the public, so that every investor will know precisely what every railroad corporation may and may not lawfully do in issuing and selling securities, and that every shipper and traveler may know the duty and obligation of every railroad company to him, whether in Maine or California, in Michigan or Texas?

So long as state railroad corporations exist, every issue of stock or bonds or other securities must be examined, and the legality and regularity of all corporate and other proceedings under the charter of the company and the laws of the state creating it, and of the several states in which the railroad lines are located, must be tested and supported by the opinion of counsel. Federal incorporation would do away with this delay and expense, which of itself would be a great gain.

I have no doubt that Congress has power to provide by general law for the incorporation of all railroad companies engaging in interstate commerce, and to

require all existing companies to reincorporate under such law.

I will cite, without taking space to analyze, the decisions of the Supreme Court which lay down principles that make this clear: *California* v. *Central Pacific Railroad* (127 U. S., 1, 39); *Pacific Railroad Removal Cases* (115 U. S. 1, 18); *McCulloch* v. *Maryland* (4 Wheat, 316); *Houston East & West Texas Railway* v. *United States* (234 U. S., 342); *Reagan* v. *Mercantile Trust Co.* (154 U. S.. 413, 414, 416); *Smyth* v. *Ames* (169 U. S., 466, 519); *Minnesota Rate Case* (230 U. S., 352, 425); *Thompson* v. *Union Pacific Railroad Co.* (9 Wall, 579); *Interstate Commerce Commission* v. *Goodrich Transit Co.* (224 U. S., 194); *Southern Ry.* v. *United States* (222 U. S., 20); *American Express Co.* v. *Caldwell* (244 U. S., 617); and *Illinois Central R. R. Co.* v. *Public Utilities Commission* (245 U. S., 493).

Congress Has Ample Power Under Both Commerce and War-Making Powers

Congress is vested by the Constitution with power to regulate interstate and foreign commerce, to establish post roads, and to make war and provide for the national defense.

In exercising these and other express powers, Congress is authorized by the last clause of section 8, Article I of the Constitution, "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof;" and the Constitution and the laws and treaties made in pursuance thereof are the "supreme law of the land."

It is easily demonstrable that the wise and effective regulation of interstate railroad rates requires the like regulation of intrastate railroad rates.

It is familiar constitutional law that any power which it is necessary for Congress to exercise in

carrying out and executing the powers *expressly* conferred upon it, is to be *implied* from the last clause of section 8, Article I; and thus follows the power to regulate intrastate rates whenever it is necessary to the effective regulation of interstate rates.

Congress may go as far as it likes in the regulation of the corporations created by it and of the railroads owned by them.

It may withdraw them entirely from regulation by the states, or it may permit regulation to such extent as it may prescribe. It is, of course, for Congress to say how far it will go.

> We need not be concerned about any legal theories as to whether the reincorporation under an act of Congress of an existing state railroad company works a dissolution of the corporation. That is merely dealing with legal fictions.
>
> The luminous opinion of Justice Bradley in *California* v. *Central Pacific Railroad Co.* (127 U. S., 1, 39) ought to be sufficient on that point. Nor do I care much about the theories as to the rights of stockholders to object to fundamental corporate changes.
>
> It is enough that every railroad was built and engaged in interstate commerce—and every stockholder has enjoyed the benefits—with full knowledge of the power of Congress whenever it chose, to regulate that commerce and every instrumentality of it.
>
> Congress has regulated the corporation already in various ways, including its book-keeping with respect to strictly intrastate as well as interstate transactions (*Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S., 194); the character and equipment of its cars, even those not engaged in interstate com-

merce (*Southern Railway Co.* v. *United States*, 222 U. S., 20); and the manner in which it shall treat, in its accounts, abandoned property, even though this deprives certain preferred stockholders of dividends which they might otherwise get (*Kansas City Southern Railway Co.* v. *United States*, 231 U. S., 423).

No stockholder of a railroad engaged in interstate commerce ever had any right to withdraw such instrumentality of interstate commerce from business whenever the method of regulation did not suit him.

Congress Has Complete Power to Act

If Congress chooses to make the corporation owning a railroad a federal instead of a state corporation, it is merely exercising its right to determine the means and agencies for the better regulation of such commerce; and a stockholder has no more right to object than when Congress chooses cars of certain designs, and equipped with certain appliances, instead of those selected by the owners of the railroad.

And I urge that in considering the power of Congress to require the federal incorporation of all railroad companies, the mistake should not be made of considering only the commerce clause.

The "war power" of Congress under the Constitution—the power to "declare war," to "provide for the common defense," to "raise and support armies," to "provide and maintain a navy," to "repel invasion," to "organize, arm and discipline

the militia," etc., etc.—is ample without any other.

The limits of that power have never been explored, even during the recent world war.

> It was in the exercise of that power that all the railroads of the country—twenty billions worth of property—were taken over without first making compensation and without question. *Northern Pacific R. Co.* vs. *North Dakota* (decided by Supreme Court, June 2, 1919). If Congress deems it advisable (it need not find it *necessary*, mind you), in times of peace to provide for the national defense by converting all state railroad corporations, with infinitely varied powers from and responsibilities to forty-eight different states, into national corporations, with uniform powers and responsibilities, subject directly to the national government, no court will hold that Congress was not exercising discretion vested in it by the above mentioned war powers of the Constitution even without any support from or reference to the commerce clause.
>
> The power seems ample under any of these provisions; and the power to deal with the subject existing, the means of its exercise and the agencies to be employed are, of course, matters exclusively within the discretion of Congress.
>
> Then, too, there is the constitutional power with reference to post roads, which may well be invoked.

The Reasonableness of Federal Action

What rights would be impaired or taken away by requiring the reincorporation under an act of Congress conferring all powers essential to the ownership, use and enjoyment of the property now owned?

Only the right to be a state railroad corporation and to corporate powers held by such corporation, which might be greater or less than those conferred by Congress.

But would not the federal corporate powers be compensation for the state powers that ceased to exist?

However that may be, the conclusive answer to any complaint is that every state railroad corporation engaged in interstate commerce was created, and every shareholder acquired his stock, with the unavoidable knowledge that Congress had power under the Federal Constitution to regulate interstate and foreign commerce and all the instrumentalities thereof; that it had power to raise and equip armies and to provide for the national defense; that such powers were in no wise lost or impaired by failure or delay in the exercise of them; and that the time, the means, the agencies and the methods of the exercise of such powers rest in the unrestricted discretion of Congress.

This was the *effect* of the decision in the Anthracite Coal Cases (*United States* v. *Delaware & Hudson*, 213 U. S. 366).

By converting existing state corporations into federal corporations, Congress would not take away the property of the corporation or of the stockholders.

It would not affect the title of the property at all. The stock certificates would represent the same relative interest in the same property, and bonds and notes would represent the same debts.

It would no more change the title of the property or the rights of stockholders and creditors than does an act of the legislature that changes the name and amends the charter of a corporation created by it.

The United States is not a government *foreign* to these corporations and their stockholders, but they and all their properties are much more subject to it and to the will of Congress than they are to their states.

Congress Should Require Existing Companies to Reincorporate

With respect to existing corporations, Congress should require them to reincorporate by filing with the designated department of the Government articles of reincorporation, which should contain the statements and declarations Congress may prescribe; and thereupon they should become federal corporations instead, of state corporations, and possess the powers which Congress, by the act for reincorporation declares such corporations shall possess.

The obligations to creditors and all other private rights and relations should continue as before, and the stock and the certificates representing it should remain as before until transfers are made in the usual manner; and, of course, the certificates would, in form as well as in fact, represent stock of the reincorporated company.

Some one has discovered in this suggestion a scheme for validating invalid stock.

> Such would not, and certainly need not, be the effect, for it could be provided in the act that such reincorporation should not, as between the corporation and its stockholders and creditors, create any new rights or obligations or validate anything already invalid.

In short, on a given day to be specified in the Act of Congress, all railroad corporations of the United States would cease to be state corporations and would become federal corporations with the powers set forth in the Act of Congress; and would thereafter be bound, with respect to all corporate powers and action, by the terms of such act, rather than by the various state statutes and special charters.

C. Exclusive Federal Regulation of Railroad Securities

The necessity for the exclusive Federal regulation of the issue of railroad securities seems now to be generally recognized, yet it is so vital to railroad credit, and to the success of any system of regulation which may be adopted, that it must not be overlooked.

State railroad commissions with power to regulate the issue of securities and control the financing of railroad companies became numerous only within recent years.

> Twelve years ago only two commissions had that power—Massachusetts and Texas. Nineteen states now have it.

In Illinois, Maine, Missouri and Pennsylvania it was conferred only in 1913; in Arizona in 1912; in California, New Hampshire, New Jersey, and Ohio, in 1911; in Maryland, in 1910; in Kansas, Michigan, and Nebraska, in 1909; in Vermont, in 1908; and in Georgia, New York and Wisconsin in 1907.

The great trunk lines in the East—Baltimore & Ohio, Erie, New York Central, Pennsylvania and others in that territory—were not subject to it at all ten years ago; but now they must get the consent of several state railroad commissions before they can issue any stock or sell any bonds to raise money; and such consent is given in most, if not all, of the states only after application, notice, hearing and deliberation by the commission.

In Union Pacific territory only three states—Missouri, Kansas and Nebraska—have the power.

It was conferred upon the Colorado Commission in 1913, but was annulled by a referendum election in 1914. The commissions in the other states—Wyoming, Utah, Idaho, Oregon and Washington—have not yet been given the power.

In the South, Georgia and Texas are apparently the only states thus far exercising the power.

Importance of Prompt Decisions

Time is of vital importance in transactions involving the sale of corporate securities.

Bankers (and that includes the syndicates composed of numerous financial houses and institutions throughout the country whose co-operation the originally contracting banker invariably enlists and with whom he shares his margin of profit) are almost indispensable in floating large

issues; but bankers never buy such securities to keep—only to sell. If they bought to keep, their capacity to buy would soon be exhausted.

Their function is precisely that of the ordinary merchant, except that they count on making quicker sales, and therefore work on a smaller margin of profits than the ordinary merchant makes on his merchandise.

When bankers make an offer for an issue of bonds or stock they base their price upon current financial conditions and quotations, expecting to make a quick turnover.

If they are required to wait for the delivery of the securities they reduce the price to cover the risks of financial changes in the meantime, and the seller gets less for his securities.

If the period of waiting is long or indefinite and the transaction is a large one, bankers sometimes will not buy at all—particularly if the financial world has any menacing features.

But in any case, the longer the delay the lower the price, because of the greater risk.

If a railroad company is compelled to go to half a dozen state railroad commissions for permission to make an issue of stock or bonds, and to encounter delays running from weeks to months on account of numerous bearings before different commissions, and in meeting their conflicting policies and views, before it can deliver the securities, it will be impossible to have the issue underwritten, or if underwritten at all the cost will be excessive.

State Commissions Not Always Consistent With Each Other

But worse still, the chances are that differences between the commissions will arise, or that the inexperience and perhaps the financial theories of some of the many commissioners may require changes that will upset the plan entirely.

Indeed, some states, in effect, deny railroad companies the right to borrow money for improvement at all.

> As attorney, and afterwards as president of the Southern Pacific, I had to do and was quite familiar with the working of the Texas law regulating railroad stock and bonds, from the time of its enactment in 1893 until the termination of my connection with the Southern Pacific in 1913.
>
> Without reference to branches and other subordinate lines, the Southern Pacific Sunset Route, made up of steamers from New York to New Orleans and Galveston, thence by rail to Los Angeles, San Francisco, and Portland, runs through the State of Texas for 936 miles from the Texas-Louisiana boundary to the Rio Grande River at El Paso, with a line diverging from this at Houston and extending to Galveston.
>
> Yet under the stock and bond law of 1893, as administered by the Texas Railroad Commission, not a dollar of bonds or a share of stock has been issued against or on account of this line for the necessary betterments and additions of this great transcontinental line of railroad in Texas since the Texas statute was enacted in 1893 to this day.
>
> The Gulf Line of the Santa Fe, extending from a connection with the main system in Oklahoma, thence through Texas to the Gulf, is in the same situation.

Not a bond or share of stock has been issued in over 20 years for the improvement of that great outlet for interstate and foreign commerce from the Northwest.

The money needed for the improvement of the Texas lines of the Southern Pacific and Santa Fe systems, when forthcoming at all, has been furnished by the parent systems by direct loan, without security, from their treasuries outside of the State and by foregoing dividends of the Texas companies from time to time to which they were fairly entitled.

Much of the lines mentioned—more than half of the Southern Pacific from the Louisiana boundary and the Gulf to the New Mexico boundary—is unproductive and would not pay operating expenses except for the through business.

No argument should be needed to show that the transcontinental lines of railroad extending from New Orleans on the Mississippi River and Galveston on the Gulf to the Pacific Ocean, and the lines from the grain fields of Oklahoma, Kansas, Missouri, Nebraska, Iowa, etc., to the Gulf—particularly those under the same stock ownership and operated as a single line—ought to be regulated, in their financial operations at least, by the Government that regulates interstate and foreign commerce.

Plan to Regulate Securities Should Be Flexible and Workable

Considering now the method or character of regulation to be prescribed by Congress to govern the issue and sale of railroad securities:

It is all important that it be made flexible and practically workable.

The issue of railroad securities does not call for the exercise of a judicial function, but it is a business matter; and whether the necessity exists and

the conditions are favorable are not judicial questions, but are business questions.

Yet all the state commissions, in practice, deal with this purely business question as if it were a matter for judicial inquiry and determination, and employ the elaborate procedure and machinery appropriate only to judicial proceedings.

The result, of course, is delay—delay for pleadings, delay for process, delay for witnesses, for hearings and arguments; and delay sometimes for writing elaborate opinions which are to become precedents. This is intolerable under financial distress, and in the frequent and quick changes in financial conditions and markets. Moreover, it is wholly unnecessary.

What the People Really Seek Through Regulation

What the Government and the people wish to prevent is the issue of stock, bonds or other railroad securities for improper or unnecessary purposes and without adequate consideration—"watered" or otherwise fraudulent securities.

This accomplished, the Government and the people are interested in encouragiug and expediting the issue and sale of the railroad securities necessary to procure the money required to provide the transportation facilities which the people must have.

They are interested in having the money procured in the shortest time and with the least waste and loss through the working of cumbersome gov-

ernment machinery, and at the best rates obtainable by the corporation.

Hence the machinery provided should be as simple as possible to accomplish these objects, and especially should it be unencumbered by judicial forms and methods of procedure.

It is purely and only an executive function—determining whether the purposes are within the corporate powers and otherwise lawful, whether the terms of the issue are consistent with the public interest, and what if any special provisions should be made to assure the application of the money to the purposes authorized.

The circumstances of the cases vary greatly—with the financial strength and credit of the different companies and the extent and character as well as the purposes of the proposed issue, and in other respects.

What is needed is a governmental agent or agency with the ability and authority to take hold of each case and deal with it in a businesslike way and without regard to forms or methods of procedure.

> Some applications can be safely disposed of within an hour: others will require days and weeks of examination and consideration.
>
> I do not believe that this duty should be imposed upon the Interstate Commerce Commission, first because it is too much judicial in its organization and methods, and secondly because it has and will have more than it can do without this.
>
> A Cabinet Minister assisted by two or three experts would be the best agency, but if that is not possible,

then some Executive Commission consisting of not over three men commanding the public confidence.

D. Exclusive Federal Regulation of Freight and Passenger Rates

Argument in support of the power of Congress to regulate intrastate as well as interstate freight and passenger rates seems unnecessary.

The decisions of the Supreme Court in the *Minnesota Rate Case* (230 U. S. 352) and in the *Shreveport Case* (234 U. S., 342) determined that question, and I shall therefore discuss only the practical necessity for the exercise of the power.

It is notorious that many of the state commissions grossly discriminate in favor of their own citizens in the matter of both passenger and freight rates, and in favor of merchants, manufacturers and producers in their own states against citizens of other states.

This discrimination is not only unjust as between the particular individuals concerned, but rate adjustments are often such as to relieve the intrastate traffic of some states from contributing its just share to the transportation expenses of the nation. The effect moreover has often disturbed and disarranged the structure of interstate rates and fares.

> Very great inequality and discriminations were created by many of the states in recent years in establishing—sometimes by statute and sometimes by Railroad Commission order—a rate of two cents per

mile for passengers, while the interstate rate was three cents.

The effect of this was not only to discriminate in favor of intrastate traffic, but to force a reduction in interstate rates which the commission apparently desired to maintain.

The action of some of the states in the controversies over the conflicting regulations with respect to passenger rates is too familiar to require further statement.

The power of many of the states to disturb and even dictate interstate rate adjustments on freight is much greater than with respect to passenger rates.

State Commissions Often Dictate Interstate Rates

Indeed it is not too much to say that the present interstate and foreign rates on traffic of immense volume and importance from very large sections of the country have been practically dictated by state commissions.

The power rests in a greater or less degree in all the states bordering on tide-water and basing points.

It is obvious that the State of Pennsylvania, by its local rates, can practically dictate the rates on anthracite and other coal to New York and New England, or upset any adjustment of such rates that the Interstate Commerce Commission may make.

So Maryland, by its local rates to Baltimore, may dislocate and disturb the entire interstate rate adjustment on bituminous coal, not only from mines in that state, but from West Virginia, Pennsylvania, Ohio, etc., to all points.

The Carolinas, Georgia and Alabama may upset the rate situation not only on important commodities like cotton and lumber, but merchandise and commerce generally.

The Texas Railroad Commission for years has dictated the interstate rates and rate adjustments on cotton, grain, merchandise and commerce generally in the Southwest.

Its control over the local rates to the Gulf ports from a great interior territory enables it to force an adjustment of interstate rates throughout a very large section.

In addition to this, it has long coerced the Texas railroads into adopting whatever interstate rates or whatever adjustments or differentials in interstate rates it desired.

It has threatened the Texas railroads with punishment by a reduction of local rates, and has made the threats good by inflicting punishment in many instances when its wishes with respect to interstate rates were disregarded.

Many instances can be cited in proof of this, but I believe my statement will not be questioned.

Indeed the Shreveport Case is a striking instance. In a word, the Texas Commission, by the order there in question, required the Texas railroads to maintain interstate rates sufficient to prevent the city of Shreveport from competing with Dallas and Houston in Texas localities much nearer Shreveport than to either of the Texas cities. (*H. E. & W. T. R. Co.* v. *U. S.* 234 *U. S.* 342.)

And this same policy has been applied for years by the Texas Commission in forcing such differentials and rate adjustments as it wished as between Texas jobbing centers on the one hand and New Orleans, Shreveport, St. Louis, Kansas City, Chicago, etc., on the other hand.

This policy and practice of coercion to a greater or less degree may be exercised by any, and probably is exercised by many, of the state commissions in the interest of the communities that elected them, as against the citizens and communities of other states.

Present Plan Involves Discrimination and Evasion of Obligations

But discrimination is not the only feature of the system.

It is the evasion of the obligation of all the traffic to bear as equitably as possible a just share of the burden of transportation, which is a matter of national concern.

If the national commission holds that a three-cent fare is necessary to make passenger traffic bear a proper share of the railroad transportation expenses, no state should be allowed to escape its just portion by a two-cent rate.

When the national commission finds that a certain amount of revenue is necessary to provide and maintain the transportation facilities which the nation requires, no state commission should be allowed to relieve its shippers from their share of the burden.

And more important still, *when the national commission establishes or recognizes a rate adjustment affecting, as such adjustments always do, a large territory, many states, and varied interests, no state commission should have authority to disturb it.*

Exclusive Federal Authority the Only Solution

My conviction is that the only way to accomplish this is to give the Federal Government exclusive authority to regulate all railroad rates, intrastate as well as interstate.

The proposal embodied in some of the "Plans" put forward, to leave authority over state rates with the state commissions, but to authorize the Interstate Commerce Commission to suspend or make the rates whenever it finds such action necessary, will not suffice.

That is the law now, as declared by the Supreme Court in the *Shreveport Case* and in the *Minnesota Rate Case.*

It has been utterly ineffective in the past, and it will prove so in the future, simply because the Interstate Commerce Commission will not exercise the authority.

The state commissions are politically powerful and aggressive. The Interstate Commerce Commission is not.

Most of the state commissions have ample leisure for action and controversy. The Interstate Commerce Commission has not.

Then there is the "comity" that one overworked tribunal is so ready to observe toward another tribunal.

And then there is the *lack of primary and direct responsibility for the rates*, without which the Interstate Commerce Commission cannot be induced to overrule or interfere with the state commission's action.

With all the relief that can be given it, by transferring some of its duties to other agencies, the duties of the Interstate Commerce Commission in the future will be far heavier and more exacting than ever in the past.

No human tribunal thus burdened will take on any additional work which it can conscientiously avoid.

Under the suggestions mentioned, it must first be convinced of its duty to interfere with the state commissions, and "there's the rub."

It will refuse to be convinced; and being unconvinced, it will be under no duty to interfere.

The inevitable result will be that the state commissions will in the future, as in the past, work in the interest of their respective states and local situations, neutralizing the benefits of national regulation.

Important Functions of the State Commissions

I do not advocate the abolition of the state commissions. There are many important functions for them to perform.

There are not only public utilities of various kinds, such as street railways, interurban railways, electric light and power companies, water companies, etc., which they ordinarily regulate, but the ordinary police powers of the states with respect to the railroads, not involved in the matter of rates and through service, could be left to them; and they could perform a most important duty to the people of their states and to the national authorities by observing the working operation of the railroads and the effect of the rates in their respective states, and bringing before the federal authorities just causes of complaint for rectification.

And, of course, I am not suggesting that the Interstate Commerce Commission may itself regulate directly all the railroad rates of the United States.

Regional Commissions Absolutely Necessary

A number of subordinate commissions in different districts or regions will be necessary in any event if we are to overcome insufferable delay, whether jurisdiction is limited to interstate or is extended to include intrastate rates.

But this appertains more particularly to the question of administrative machinery.

Organization is as essential in railroad transportation as engines and cars.

We have organizations by companies and system, but there must be for the government the organization necessary to govern and manage these companies and systems in their relations with each other and with the public, and so to co-ordinate them as to have them supply the nation with the transportation needed, as it is needed, and at reasonable rates. That is the problem of the Government.

We already have laws prescribing what is right and prohibiting what is wrong in most railroad activities.

These laws operate upon the railroad companies and their officers, severally and individually.

But they no more dispense with proper organizations acting for the Government than the signing of a charter for a company dispenses with the necessity for an organization to manage and conduct its business.

I realize that this is a somewhat primary state-

ment of principles, but I wish to be sure that the point is made clear.

Questions of Rates Must Be Settled Quickly

Questions of transportation rates and commerce cannot endure delay.

> Changes in trade and trade relations are frequent and rapid, and rates must be adjusted to them. A railroad or group of railroads may become bankrupt waiting for an increase in rates pending a long and tedious proceeding, involving the examination of many witnesses, the argument of many counsel, the preparation, printing and reading of many briefs, and the writing of carefully expressed opinions.
>
> An industry or business or community may suffer irreparable injury through some sudden shift or new development in commercial or transportation conditions.
>
> Any system of regulation which does not provide for prompt action and prompt decision of all transportation questions will bear heavily upon commerce and business.
>
> That the Interstate Commerce Commission is already burdened with more than it can do is obvious.
>
> Take down any volume of the reports of the Commission's decisions and run through the cases and observe the figures at the top showing the date when they were submitted and the date when they were decided, and bear in mind that they were commenced long before they were submitted in argument.

It is clearly necessary that the Interstate Commerce Commission must not only be relieved of all of its purely executive and administrative work,

but be aided by subordinate commissions, if it is to perform the function which all seem to agree should be vested in it as the best agency for that purpose, namely, the determination of rate questions.

The Interstate Commerce Commission Overburdened by Its Present Functions

The system of regulation we now have imposes on the Interstate Commerce Commission executive, judicial and legislative functions of great difficulty and importance, and all plans thus far suggested contemplate enormous additions to such functions.

The Commission is already obviously overburdened, and only by relieving it of its executive duties, for which such a body is least suited, can it perform its more important semi-judicial functions, for which it is qualified and equipped.

The exercise of a judicial function (in a general rather than a technical sense) is called for when a complaint is made that a rate is excessive to the shipper or unremunerative to the carrier, or discriminates as between individuals or communities or commodities, or is otherwise unreasonable.

This calls for inquiry, the taking of testimony and a determination of the point at issue.

The "executive function" embraces innumerable activities; it is the initiation, the beginning of practically everything (but limiting it to such as the Government, as distinguished from the corporation, should exercise); it must include supply-

ing the transportation which the country needs, the kind and quality of roadway, structures, equipment and other facilities and the proper maintenance of them; all measures of safety and economy; trains and train service; the initiation of rates; the constant adjustment and readjustment of transportation to changing traffic conditions, etc., etc.

While, of course, the Government will not undertake all of this under private ownership, it will continue to exercise most of the powers held under existing laws and such additional powers as may be deemed necessary.

The Present Executive Functions of the Commission

Let us consider first the executive powers which have already been conferred upon the Interstate Commerce Commission.

> The Commission, by amendments of the Act to Regulate Commerce, has been given supervision of the car service, one of the most important and difficult features of railroad transportation, calling for supervision distinctively executive in character, which especially needs the power and authority of an officer who can act daily and instantly to meet emergencies, which the Commission, with the cumbersome machinery inevitably incident to a semi-judicial body, cannot do.
>
> Section 12 of the Act requires the Commission to inquire into the management of the business of the carriers and to keep itself informed in regard thereto, and to enforce all the provisions of the Act, which

include requirements for the publication of tariffs, the construction of switch connections and various other facilities, the strict observance of the published tariffs, the prohibition of rebates and secret rates, the observance of accounting regulations—in short, the employment and direction of a large and ever diligent inspection force, not merely with a view to prosecution of violation of penal provisions of the Act, but to secure the faithful observance of the multitude of regulations prescribed by the Act and by the Commission under it.

This wide and important field of governmental activity is purely executive, for which a commission or like tribunal is in no wise fitted.

One of the most substantial and insistent complaints of railroad owners and executives is that the performance of these executive duties of detection and prosecution, and the state of mind to which such point of view leads, tend naturally and inevitably to unfit the Commissioners to act impartially in determining controversial matters which the law commits to them for decision.

Under Section 10 of the Clayton Act, approved October 15, 1914, reports are required to be filed with the Interstate Commerce Commission with respect to competitive bidding for railroad material and supplies, and for railroad securities, affecting corporations with common officers, stockholders, etc., and Section 11 of the Act expressly vests in the Interstate Commerce Commission the power and duty to enforce the Clayton Act insofar as it affects common carriers.

The Interstate Commerce Commission is also charged with the enforcement of the Government Aided Railroad and Telegraph Act of August 7, 1888 (25 Statutes 382).

The Commission also is given various duties with reference to railway mail service pay by Section 5 of

39 Statutes 412 and to the parcels post by Section 8 of 37 Statutes 558.

The Commission is charged with the administration and enforcement of the Safety Appliance Acts (27 Statutes 531; 32 Statutes 943; 36 Statutes 298); and under these Acts has been required to deal with questions relating to the application of driving wheel brakes, train brakes, automatic couplers, grab irons, hand holds, height for draw bars of freight cars, percentage of power brake cars required in trains, the application of sill steps, hand brakes, ladders and running boards; required to designate the number, dimension, location and manner of application of safety appliances; and is authorized to employ and has employed and supervised the work of a large number of inspectors under the Safety Appliance Acts.

The Commission is also required by the Accident Report Act (36 Statutes 350) to obtain reports of all collisions, derailments or other accidents resulting in injury to persons, equipment or road bed, and is authorized to investigate all such accidents and required to report thereon; also "to execute and enforce the provisions" of the Hours of Service Act (34 Statutes 1415), also the "Ash Pan Act" (35 Statutes 476), and is also required to prescribe regulations under the Transportation of Explosives Act.

The Commission is also charged with the enforcement of the Boiler Inspection Act and has a considerable organization for that purpose, and it is also required to investigate and report on the use of and necessity for block signal systems and appliances for the automatic control of railway trains, etc. All these are purely executive duties.

E. Creation of a Government Department of Transportation

It must be apparent that these duties relating to the quality and character of the service rendered by the railroads, to the application of safety appliances and the maintenance of the same, to the condition of engines and other equipment, and to the investigation, detection and prosecution of violations of the law, and regulations with respect to accident reports, etc., etc., could be very much more promptly and effectively handled in an executive department of the Government than by a semi-judicial tribunal that can act only in conference.

But the greatest advantage would be the time it would give the Commission for the performance of its more important duties of passing upon rates and determining questions which only such a body can properly determine, and also in relieving that Commission of the petty prosecuting activities which tend to unfit its members for their more important duties.

A Department of Transportation should be created to take over and perform the executive and administrative functions devolving upon the Interstate Commerce Commission under existing laws, and any created by additional statutes.

I believe that the head of the Department of Transportation should be a member of the Cabinet.

As I was the first railroad executive, so far as I know, to suggest that a Cabinet member be put at the head of a Department of Transportation, and as I believe very strongly in the wisdom of it, I shall state briefly my reasons, which go further than merely relieving the Commission of its executive duties.

Reasons Why Head of Transportation Department Should Be Member of Cabinet

It soon becomes obvious to any one who has opportunity to observe that executive and administrative functions cannot be efficiently exercised by boards, commissions or committees.

There was demonstration of this in Washington during the recent war. The larger the board or commission, the more cumbersome or difficult becomes the task; and the abler and stronger as executives the individuals are, the more likely that the board or commission will become a debating society, making but little progress with the work, unless, of course, they avoid conflicts by leaving the work to subordinates.

Recent experience has demonstrated the necessity for a national Government officer to meet emergencies resulting from exceptional congestion in traffic or through blockades of transportation, by quickly mobilizing the transportation resources, and by the arbitrary diversion, if need be, of traffic from lines which cannot handle it to lines which can, and by other instant and heroic methods.

How can the Interstate Commerce Commission, or any similar body, exercise promptly and adequately this extraordinarily important and difficult executive power which requires immediate and varied action from day to day to be of any value?

They could make orders and appoint some subordinate, who, when appointed, could be directed only by other orders or general rules, since the Commission cannot act except through quorums.

A power so vast should be committed to no Commission employe, and to no officer of less rank than a Cabinet member, who is a part of the Administration and is in direct touch with the President and can change his orders instantly to meet changing conditions.

I have already indicated in my discussion of the issue of railroad securities the importance of prompt and businesslike Government action with respect to that very important matter.

Then in the matter of service, a Cabinet officer by calling in railroad executives, and through informal discussions, could bring about changes in train service, schedules, and other things desired by the public, which if taken up with the elaborate formality and procedure inevitable in cases of a commission or similar body, would not be accomplished for weeks, and possibly months.

In other words, a single executive representing the Government in all these important matters of service could get instant touch with the railroad executives, and secure action with respect to these matters of such vital importance to the public very

much quicker than would be possible by the slow moving procedure of any board or commission.

The Secretary would not be hemmed about by any judicial conceptions, but could "talk across the table" to the railroad executives about what was needed and what should be done.

If his wishes were not complied with, he could bring the matter before the Interstate Commerce Commission by formal complaint; but in nine cases out of ten his demands for service and facilities, if at all reasonable, would be met.

I understand that one of the principal objections urged to a Secretary of Transportation is the political possibilities of the position.

I am not an authority on that subject, but I do know that he would not profit politically by his contact with railroad executives, for there is no class in this country with less political power than railroad officers; and I do not see how the Secretary could himself control the votes of railroad employes.

They would not be his employes or Government employes, but would be employed by the railroad companies.

Neither would the position be at all analogous to that of the Director General of Railroads, who is in absolute possession and control of the railroads, prescribes the organization, selects the personnel, employs and discharges men, fixes all wages and salaries and is the unhampered employer and chief of all the railroad forces of the country.

He spends hundreds of millions of dollars in the purchase of equipment, coal and materials and supplies of all kinds, and has power beyond that ever exercised

by any man in the United States excepting only the President.

The Secretary of Transportation, however, would prescribe no organization, would select no personnel, would employ nobody and fix nobody's wages or salaries except the small clerical force in his immediate department.

He would buy no materials or supplies, and would be without any authority or control whatever over the wages or working conditions or action in any respect of the army of railroad employes in this country.

He would be a member of the President's Cabinet and head of a Government Department charged with the duty of enforcing laws relating to the railroads, observing their operation, recommending improvements and changes in the public interest and bringing before the prosecuting officers of the Government violations of the railroad laws; and presenting to the Interstate Commerce Commission by complaint any failure of railroad companies to provide the service and facilities to which he thought the public was entitled.

I do not contend that these functions may not be performed by a Transportation Department composed of a small number of commissioners, but I do insist that they cannot be performed as well, in any comparable degree, as by a Cabinet member.

The Railroad Business Needs "A Friend at Court"

But a stronger reason still why a Cabinet member should be at the head of the Transportation Department is that the railroad business is unrepresented in the Government—is without any "friend at Court."

It is, I understand, the largest single industry in the United States next to agriculture, and cer-

tainly there is none more vital to the very life of the nation, and yet neither in the President's Cabinet nor anywhere in the vast machine constituting the Government of the United States is there a department or bureau or agency or officer of any kind or description whose duty it is to look after its interest, to defend it, to speak for it, or to say a word for justice in its behalf.

The Interstate Commerce Commission was conceived in hostility to it.

The Interstate Commerce Act was designed to repress and regulate and punish it.

Running throughout the Interstate Commerce Act and all other statutes on the books of Congress relating to the railroads is an unmistakable spirit and purpose to curb and repress, unrelieved by a single helpful, constructive, encouraging provision which I can now recall.

Mind you, I am not saying that this restrictive and repressive legislation and the creation of the Commission as a stern administrator of the law rather than a helpful agency was not necessary. Quite the contrary. Most of the things prohibited were wrong.

But I do say that *the policy of hostility and repression was carried too far, and the time has come for a change.*

I do not mean change by repealing any of the laws or abandoning what has been done, but a change by adding to the repressive and restrictive laws helpful and constructive laws and administrative agencies capable of more expeditious action.

Transportation Business Should No Longer Be Ignored by Government

The transportation interests of the country should no longer be ignored in the organization of the Government's business and left to what I may term the penal authorities.

Along with—

The Secretary of Treasury
Who looks after the banking and financial interests of the country;

The Secretary of War and the Secretary of the Navy
Who look after national defence;

The Secretary of Agriculture
Who looks with solicitude after agricultural interests;

The Secretary of Labor
Who looks after the interests of the laborers;

The Secretary of Commerce
Who looks after the commercial and industrial welfare of the nation;

The Secretary of Interior
Who sees to the development of multitudes of internal projects of public interest; and

The Postmaster General
Who provides the communication for the people,

—there should be—

A Secretary of Transportation

—who should see that the nation has the transportation without which none of these others would

be possible or of value, and who should have the same solicitude for the development and success of this essential business and industry that the others show for the interests they represent.

* * *

Thus far I have discussed only a *permanent* railroad policy.

It is necessary of course that Congress should provide for the period of transition from existing Government control back to private management, and adequately provide for the difficulties that will confront the railroad companies upon the return of their properties with an increased wage scale of approximately a billion dollars per annum over the scale prevailing when the railroads were taken over by the Government, and with prices of materials and supplies required in railroad operations increased in proportion to other costs of living, since, without provision for this situation, immediate bankruptcy will face many of the companies and impaired credit will be the fate of all.

But this paper is already extended beyond reasonable limits, and therefore it will be confined to consideration of permanent plans without reference to temporary measures necessary for dealing with the transitory condition.